

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION</b>	)	<b>MDL No. 1456</b>
	)	<b>Master File No. 01-12257-PBS</b>
	)	<b>Subcategory Case No. 06-11337</b>
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	<b>Judge Patti B. Saris</b>
<i>State of California, ex rel. Ven-A-Care of the</i>	)	
<i>Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.</i>	)	
Case No: 03-cv-11226-PBS	)	
	)	

**STATUS REPORT – APRIL 29, 2011**

The undersigned counsel, on behalf of plaintiff State of California, hereby submits the attached Status Report in accordance with the Court's June 17, 2004, Procedural Order.

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General for the State of California

Dated: April 29, 2011

By: /s/ Nicholas N. Paul  
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STATE OF CALIFORNIA**

**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories Inc., *et al.***  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005. (Master File 01-12257, Dkt. No. 1679). Plaintiffs also filed a motion for leave to file unredacted Exhibits under seal (Exs. A-K & M-R to the FAC), (Master File 01-12257, Dkt. Nos. 1680, 1703), which the Court granted via electronic order.

**Motions to Dismiss**

On January 17, 2006, Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. (Master File 01-12257, Dkt. Nos. 2047, 2051.)

On March 22, 2007, the Court denied in part and granted in part Defendants' joint motion to dismiss, and denied Abbott's motion to dismiss. (Master File 01-12257, Dkt. No. 3948.)

**Case Management Order (CMO)**

The Court entered Case Management Order 31 on August 1, 2007. (Master File 01-12257, Dkt. No. 4586.) Case Management Order 35 was entered on November 4, 2008. (Master File 01-12257, Dkt. No. 5664.) Pursuant to the Court's request, on February 20, 2009, the parties filed a Joint Motion for Entry of Proposed Amendment to Case Management Order No. 31. (Master File 01-12257, Dkt. No. 5920; Subcat. File 06-11337, Dkt. No. 182.) The motion and amended CMO were granted by the Court on March 4, 2009. (Master File 01-12257, Dkt. No. 5942; Subcat. File 06-11337, Dkt. No. 186.)

The parties filed a Joint Motion to Set Revised Briefing Schedule for Motions for Summary Judgment and to Amend CMO 31 on October 16, 2009, (Master File 01-12257, Dkt. No. 6597; Subcat. File 06-11337, Dkt. No. 497), which was granted on October 28, 2009.

### **Alternative Dispute Resolution**

The parties engaged in mediation with Professor Eric Green in April 2009, with negative results. A renewed round of mediation with Professor Green and one Defendant took place on December 6, 2010, with negative results. Plaintiffs remain open to, and continue to pursue, mediation with Defendants.

### **Other Resolution**

On December 23, 2010, Plaintiffs filed two Stipulated Dismissals as to Defendants Dey Pharma, L.P. and Dey, Inc., with two proposed orders (Master File 01-12257, Dkt. Nos. 7361-62; Subcat. File 06-11337, Dkt. Nos. 842-43). Orders of Dismissal were entered on January 5, 2011 (Master File 01-12257, Dkt. Nos. 7377-78; Subcat. File 06-11337, Dkt. Nos. 851-52).

### **Pending Matters**

#### **Discovery Motions:**

On August 21, 2009, Defendants filed their Motion for an Order Granting Leave to Take Deposition Out of Time, seeking to take the deposition of Thomas Ahrens after the discovery cut-off date of June 15, 2009. (Master File 01-12257, Dkt. No. 6394; Subcat. File 06-11337, Dkt. No. 376.) Also on August 21, 2009, Defendant Sandoz Inc. filed its Motion to Determine the Sufficiency of Plaintiff State of California's Response to Sandoz Inc.'s First Set of Requests for Admission. (Master File 01-12257, Dkt. No. 6392; Subcat. File 06-11337, Dkt. No. 373.) Plaintiff filed its oppositions to Defendants' motions on September 4, 2009 (Master File 01-12257, Dkt. Nos. 6480-82; Subcat. File 06-11337, Dkt. Nos. 436-37.)

No hearing has been set, nor have orders been issued, on these motions.

**Summary Judgment Motions:**

On November 24, 2009, Plaintiffs filed a Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6685-92, 6714-15; Subcat. File 06-11337, Dkt. Nos. 547-54, 573, 575.)

On November 25, 2009, Defendants filed a Joint Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6702-03, 6710; Subcat. File 06-11337, Dkt. Nos. 563-65.) Defendants also filed three individual Motions for Summary Judgment on November 25, 2009. (Master File 01-12257, Dkt. Nos. 6694-700, 6704-05, 6707-09, 6711; Subcat. File 06-11337, Dkt. Nos. 555-60, 562, 565, 567-71.)

On December 21, 2009, Plaintiffs filed their opposition briefs to Defendants' joint and individual Motions for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6779-92; Subcat. File 06-11337, Dkt. Nos. 615-28.) Defendants also filed their opposition to Plaintiffs' Joint Motion for Partial Summary Judgment (Master File 01-12257, Dkt. Nos. 6793-801; Subcat. File 06-11337, Dkt. Nos. 629-37.)

On January 15, 2010, Plaintiffs filed their reply in support of their Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. No. 6842; Subcat. File 06-11337 Dkt. No. 650.) Relator, Ven-A-Care of the Florida Keys, Inc., filed a separate Reply to Defendants' Joint Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. No. 6843; Subcat. File 06-11337, Dkt. No. 659.)

Also, on January 15, 2010, Defendants filed their reply briefs in support of their joint and individual motions for partial summary judgment. (Master File 01-12257, Dkt. Nos. 6837-41, 6844-48; Subcat. File 06-11337, Dkt. No. 648-49, 652-58.)

On January 29, 2010, Plaintiffs filed their sur-reply briefs in opposition to Defendants' joint and individual motions for partial summary judgment. (Master File 01-12257, Dkt. Nos. 6872-76, 6878; Subcat. File 06-11337, Dkt. Nos. 668-73.) Defendants also filed their sur-reply in opposition to Plaintiffs' motion for partial summary judgment. (Master File 01-12257, Dkt. Nos. 6877, 6879; Subcat. File 06-11337, Dkt. Nos. 674-75.)

Plaintiffs' and Defendants' motions for summary judgment were heard on February 8, 2011, and the Court has not yet ruled on the motions. No progress has occurred between the parties regarding settlement, although negotiations continue with one Defendant.

**Miscellaneous Motion(s):**

Defendants filed a Motion for Remand November 25, 2009. (Master File 01-12257, Dkt. No. 6701; Subcat. File 06-11337, Dkt. No. 561.) Plaintiffs filed their opposition to the motion on December 9, 2009. (Master File 01-12257, Dkt. No. 6749; Subcat. File 06-11337, Dkt. No. 596.) The motion was heard on February 8, 2011. A ruling has yet to be issued.

**CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on April 29, 2011, I caused a true and correct copy of the foregoing, **Status Report–April 29, 2011**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Nicholas N. Paul  
NICHOLAS N. PAUL